



THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Criminal Trial No. 5/2007

In the matter between

REX

vs

MFANZILE ISHMAEL MTSETFWA

Defendant

Coram

Banda, CJ

For the Crown

Mr. Simelane

JUDGMENT

[1] The accused was charged with the offence of incest. It was alleged that upon or on divers occasions, date unknown, between the year 1999 and 2002 and at or near Mayiwane area in the District of Hhohho, the accused being a male person did unlawfully and intentionally have unlawful sexual intercourse with LUNGILE GOODNESS MTSETFWA being blood related as

father of the said LUNGILE GOODNESS MTSETFWA whom he was consequently legally prohibited from marrying.

The accused pleaded guilty after each element of the offence was separately put to him. The plea was confirmed by Mr. Simelane who appeared on his behalf. In mitigation Mr. Simelane told the Court that the accused was a first offender and that he has been in custody since 8th March 2004; that he is a sick man with chest pains; that he has shown remorse by pleading guilty and that he has 13 other children and that his own mother is now 70 years old. The accused was a commercial farmer before he was arrested for this offence. Mr. Simelane submitted that, in view of the factors in mitigation, the proper sentence should be a fine.

The accused has been convicted of a very serious offence of incest which was committed with the accused's own daughter. This particular offence was aggravated by the fact that it was committed over an extended period of time and in the present prevailing circumstances, she was clearly exposed to the dangers of HIV and Aids. As a result of the accused sexual behaviour with his daughter a child was born. This is supported by the DNA Analysis

Report which is part of the agreed facts in this case. The complainant was aged 16 years when the offence was first committed. The accused had attempted to induce the complainant to abort the child and had travelled with her to South Africa for that purpose. As against that I have to take into consideration what Mr. Simelane has said in mitigation. The accused has been in custody since 8th March 2004 and in the circumstances I am satisfied that a custodial sentence of ten (10) years imprisonment would be appropriate without an option of a fine. The sentence will take effect from the date when the accused was taken into custody which is 8th March 2004.

Pronounced in open Court at Mbabane on this **7th** day of **June**
2007.

A handwritten signature in black ink, appearing to be 'R.A. Banda', written in a cursive style.

R.A. BANDA CHIEF
JUSTICE